

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

OLIVIA Y., by and through her next friend, James D. Johnson;
JAMISON J., by and through his next friend, Clara Lewis;
DESIREE, RENEE, TYSON, and MONIQUE P.,
by and through their next friend, Sylvia Forster;
JOHN A., by and through his next friend, James D. Johnson;
CODY B., by and through his next friend, Sharon Scott;
MARY, TOM, MATTHEW, and DANA W.,
by and through their next friend, Zelatra W.; and
SAM H., by and through his next friend, Yvette Bullock;
on their own behalf and behalf of all others similarly situated

PLAINTIFFS,

v. CIVIL ACTION NO. 3:04CV251LN

HALEY BARBOUR, as Governor of the State of Mississippi;
DONALD TAYLOR, as Executive Director of the Department
of Human Services; AND BILLY MANGOLD,
as Director of the Division of Family and Children's Services

DEFENDANTS.

**PLAINTIFFS' MOTION TO WITHDRAW DECLARATION OF SHIRIM
NOTHENBERG AND SUBSTITUTE DECLARATION**

Plaintiffs respectfully file this motion to withdraw the Declaration of Shirim Nothenberg, filed on October 5, 2010, and to substitute the attached declaration. Due to the self explanatory nature of this motion, Plaintiffs respectfully request that the Court waive any requirement that a supporting memorandum of law be filed. In support, Plaintiffs state the following:

1. On October 5, 2010, Plaintiffs filed a Motion for Contempt and for the Appointment of a Receiver [Dkt. 511]. In that motion and the accompanying memorandum of law, Plaintiffs set out Defendants' longstanding and wide-ranging noncompliance with their Period Two obligations and how that noncompliance has and continues to harm Mississippi children in foster care in Defendants' custody.

2. In support of the motion, Plaintiffs filed the Declaration of Shirim Nothenberg [Doc. 515, Ex. E to Pls.' Mem. Of Law In Support of Mot. for Contempt and Appointment of Receiver].
3. Defendants responded to Plaintiffs' motion on December 3, 2010. On that same date, Defendants moved to strike the Nothenberg Declaration [Dkt. 535].
4. Although Plaintiffs maintain that the Nothenberg Declaration was filed appropriately, in an effort to promote judicial economy, avoid unnecessary litigation, and allow the Court to focus on the important issues raised in the Motion for Contempt and for the Appointment of a Receiver, Plaintiffs request the withdrawal of the Nothenberg Declaration.
5. Plaintiffs further request that a revised Declaration of Shirim Nothenberg, attached hereto as Exhibit A, be substituted as Exhibit E to Plaintiffs' Memorandum of Law in Support of their Motion for Contempt and for the Appointment of a Receiver. The revised Declaration of Shirim Nothenberg simply attaches true and correct copies of eight documents that were originally attached to the Nothenberg Declaration.
6. Also attached to the instant motion is Exhibit B, which is a list of substitute citations. Plaintiffs request that the Court permit Plaintiffs to replace the original citations to the Declaration of Shirim Nothenberg in Plaintiffs' Motion for Contempt and for the Appointment of a Receiver with the citations listed in Exhibit B.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' motion to withdraw the original Declaration of Shirim Nothenberg and substitute the attached revised declaration.

Respectfully submitted, this 23rd day of December, 2010.

/s/ Shirim Nothenberg
Marcia Robinson Lowry (MBN 43991 *pro hac vice*)
Shirim Nothenberg (MBN 43990 *pro hac vice*)
Jessica Polansky (MBN 45356 *pro hac vice*)
CHILDREN'S RIGHTS
330 7th Avenue, 4th floor
New York, New York 10001
Telephone: (212) 683-2210
E mail: mlowry@childrensrights.org

W. Wayne Drinkwater, Jr. (MBN 6193)
BRADLEY ARANT BOULT CUMMINGS LLP
One Jackson Place, Suite 400
188 East Capitol Street
Jackson, Mississippi 39201
Telephone: (601) 948-8000
Facsimile: (601) 948-3000
E mail: wdrinkwater@babco.com

John Lang (MBN 43987 *pro hac vice*)
Attorney at Law
60 East 42nd Street
Suite 4600
New York, NY 10165
Telephone: (212) 300-0646
E mail: john.lang@attorneylang.com

Christian Carbone (MBN 43986 *pro hac vice*)
John Piskora (MBN 44474 *pro hac vice*)
LOEB & LOEB LLP
345 Park Ave.
New York, New York 10154
Telephone: (212) 407-4000
E mail: ccarbone@loeb.com

Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2010, I electronically filed the foregoing Plaintiffs' Motion To Withdraw Declaration Of Shirim Nothenberg And Substitute Declaration using the ECF system, which sent notification of such filing to the following:

Dewitt L. ("Rusty") Fortenberry Jr., Esq.
Kenya Key Rachal, Esq.
Gretchen L. Zmitrovich, Esq.
Ashley Tullos Young, Esq.
BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC
428 I-55 North
Meadowbrook Office Park
Jackson, MS 39211
(601) 351-2400

Harold E. Pizzetta, III, Esq.
Assistant Attorney General
General Civil Division
Carroll Gartin Justice Building
430 High Street
Jackson, Mississippi 39201

Attorneys for Defendants Haley Barbour, et al.

/s Shirim Nothenberg